Chang et al v. Virgin Mobile USA LLC et al

Doc. 19 Att. 1

EXHIBIT 1

Dockets.Justia.com

JS 44 (Rev. 10/06)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Susan Chang, as Next Friend of Alison Chang, a Minor, and Justin Ho-Wee Wong

(b) County of Residence of First Listed Plaintiff: Dallas, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
See attachment

DEFENDANTS

Virgin Mobile USA, LLC, Virgin Mobile PTY Ltd., and Creative Commons Corporation

3-07CV1767-D

County of Residence of First Listed Defendant: Somerset County, NJ
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
Attachment

RECEIVED
OCT 19 2007
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☒ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
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- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
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- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

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- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

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- ☐ 330 Federal Employers' Liability
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- ☐ 360 Other Personal Injury

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- ☐ 862 Black Lung (923)
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- ☐ 864 SSID Title XVI
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- ☐ 892 Economic Stabilization Act
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- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
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- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):

Brief description of cause: Suit for alleged unauthorized use of plaintiff's photograph in advertising campaign in Australia.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ unliquidated and exemplary damages

CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) PENDING OR CLOSED (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: 10-18-07

SIGNATURE OF ATTORNEY OF RECORD: [signature]

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, as Next Friend of ALISON CHANG, a Minor, AND JUSTIN HO-WEE WONG Plaintiffs, v. VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION Defendants.	§ § § § § § § § § § § § §	CAUSE NO. ______________

ATTACHMENT

PLAINTIFFS:
Susan Chang, as parent a/n/f/ of Alison Chang
Justin Ho-Wee Wong

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DEFENDANTS:
Virgin Mobile USA

ATTORNEYS FOR DEFENDANT VIRGIN MOBILE USA

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*A resident of the Dallas Division of the Northern District of Texas and a member of the Bar of this Court

Of Counsel:
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Court ID No. 3571
(*Pro hac vice motion forthcoming*)
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Virgin Mobile Pty Ltd.
Attorneys for Virgin Mobile Pty Ltd.
(no attorney of record)

Creative Commons Corporation
Attorneys for Creative Commons Corporation
(no attorney of record)

United States District Court
Northern District of Texas

Supplemental Civil Cover Sheet For Cases Removed From State Court

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. **State Court Information:**

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court	Case Number
134^{TH} Judicial District, Dallas County, Texas	DC-07-11386

2. **Style of the Case:**

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type	Attorney(s)
SEE ATTACHMENT	

3. **Jury Demand:**

Was a Jury Demand made in State Court? ☒ Yes ☐ No

If *"Yes,"* by which party and on what date?

Plaintiff — Party

September 19, 2007 — Date

American LegalNet, Inc.
www.Forms*Workflow*.com

4. **Answer:**

Was an Answer made in State Court? ☐ Yes ☒ No

If *"Yes,"* by which party and on what date?

_______________________________ _______________________
Party Date

5. **Unserved Parties:**

The following parties have not been served at the time this case was removed:

Party	Reason(s) for No Service
Virgin Mobile PFY Ltd.	Unknown
Creative Commons Corporation	Unknown

6. **Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party	Reason
N/A	

7. **Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

Party	Claim(s)
Susan Chang, a/n/f of Alison Chang, a Minor	Invasion of privacy, libel per se, and libel per quod for alleged unauthorized use of plaintiff's image in advertising campaign in Australia

American LegalNet, Inc.
www.FormsWorkflow.com

Justin Ho-Wee Wong

Breach of contract and negligence claim for alleged breach of license agreement for use of photograph taken by plaintiff.

American LegalNet, Inc.
www.FormsWorkflow.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, as Next Friend of ALISON CHANG, a Minor, AND JUSTIN HO-WEE WONG Plaintiffs, v. VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION Defendants.	§ § § § § § § § § § § § §	CAUSE NO. ____________

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PLAINTIFFS:
Susan Chang, as parent a/n/f/ of Alison Chang
Justin Ho-Wee Wong

ATTORNEYS FOR PLAINTIFFS
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Virgin Mobile Pty Ltd.
Attorneys for Virgin Mobile Pty Ltd.
(no attorney of record)

Creative Commons Corporation
Attorneys for Creative Commons Corporation
(***no attorney of record)***

No. DC-07-11386

SUSAN CHANG, as Next Friend of ALISON CHANG, a Minor, AND JUSTIN HO-WEE WONG	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	DALLAS COUNTY, TEXAS
VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION	§	
Defendants.	§	134TH JUDICIAL DISTRICT

NOTICE OF REMOVAL

Virgin Mobile USA, L.P.,[1] files this Notice of Removal and respectfully requests that this Court take notice that Virgin Mobile USA, L.P., defendant in this action, has, pursuant to federal law, filed with the clerk of the United States District Court for the Northern District of Texas, Dallas Division, a Notice of Removal, a copy of which is attached and filed with this document, and that this action is removed to the United States District Court for the Northern District of Texas for trial as of the filing of this notice today, October 19, 2007. This Court is respectfully requested to proceed no further in this action, unless and until such time as the action may be remanded by order of the United States District Court.

[1] Plaintiff named as defendant Virgin Mobile USA, LLC. On October 11, 2007, Virgin Mobile USA, LLC merged into a new entity known as Virgin Mobile USA, L.P.

Respectfully submitted,

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*A resident of the Dallas Division of the Northern District of Texas and a member of the Bar of this Court.

OF COUNSEL:

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ATTORNEYS FOR DEFENDANT
VIRGIN MOBILE USA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, as Next Friend of ALISON CHANG, a Minor, AND JUSTIN HO-WEE WONG Plaintiffs,	§	
v.	§	CAUSE NO. 3:07-CV-1767-D
VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION Defendants.	§	

INDEX OF DOCUMENTS

	DESCRIPTION	DATE
1.	PLAINTIFFS' ORIGINAL PETITION	09/19/2007
2.	JURY DEMAND	09/19/2007
3.	CITATION	09/26/2007
4.	AFFIDAVIT OF SERVICE	10/16/2007

GARY FITZSIMMONS, DISTRICT CLERK

CASE SUMMARY

CASE NO. DC-07-11386

SUSAN CHANG vs. VIRGIN MOBILE USA,LLC, et al	§ § § § §	Location: Judicial Officer: Filed on:	**134th District Court** **ASHBY, ANNE** **09/19/2007**

CASE INFORMATION

Case Type: **DEBT/CONTRACT**

PARTY INFORMATION

		Lead Attorneys
PLAINTIFF	**CHANG, SUSAN**	**ZEHL, RYAN H.** 713-491-6064
DEFENDANT	**CREATIVE COMMONS CORPORATION**	
	VIRGIN MOBILE PTY LTD	
	VIRGIN MOBILE USA,LLC	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
09/19/2007	ORIGINAL PETITION (OCA)	
09/19/2007	ISSUE CITATION	
09/19/2007	ISSUE CITATION COMM OF INS OR SOS	
09/19/2007	JURY DEMAND (OCA) PLAINTIFF CHANG, SUSAN	*Vol./Book J24, Page62, 1 pages*
09/26/2007	**CITATION** VIRGIN MOBILE USA,LLC served 10/11/2007 *ATTORNEY CALLED 10/1/07 TO BE MAILED, RR*	
09/26/2007	**CITATION SOS/COI/COH/HAG** VIRGIN MOBILE PTY LTD unserved CREATIVE COMMONS CORPORATION unserved	

DATE	FINANCIAL INFORMATION		
	PLAINTIFF CHANG, SUSAN		
	Total Charges		369.00
	Total Payments and Credits		361.00
	Balance Due as of 10/17/2007		**8.00**
09/19/2007	Charge	PLAINTIFF CHANG, SUSAN	152.00
09/24/2007	Charge	PLAINTIFF CHANG, SUSAN	217.00
09/27/2007	PAYMENT (CASE FEES) Receipt # 55830-2007-DCLK	PLAINTIFF CHANG, SUSAN	(361.00)

Printed on 10/17/2007 at 3:06 PM

FROM GX (THU)OCT 18 2007 12:25/ST. 12:24/NO. 6304325005 P 2
10/18/07 12:38 2146318069

TAB 1

Filed
07 September 19 P6:35
Gary Fitzsimmons
District Clerk
Dallas District

SCANNED

No. 07-11380

SUSAN CHANG, as Next Friend of ALISON CHANG, a Minor, AND JUSTIN HO-WEE WONG	§	IN THE DISTRICT COURT
Plaintiffs,	§	
v.	§	DALLAS COUNTY, TEXAS
VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION Defendants.	§	G-134th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Susan Chang, as parent and next friend of Alison Chang, and Justin Ho-Wee Wong ("Justin Wong") file their Original Petition, complaining of Defendants, Virgin Mobile USA, LLC, Virgin Mobile Pty Ltd ("Virgin Mobile"), and Creative Commons Corporation respectfully showing the Court as follows:

DISCOVERY PLAN

Plaintiffs intend to conduct discovery in this case under Level 2 pursuant to Rule 190.2 of the Texas Rules of Civil Procedure.

PARTIES

1. Plaintiff, Susan Chang, an individual residing in Dallas, Texas, brings this action as parent and next friend of Alison Chang, a minor, who resides in Dallas, Texas.

2. Plaintiff, Justin Ho-Wee Wong, is an individual residing in Dallas, Texas.

3. Virgin Mobile USA, LLC is a Delaware corporation with its principal place of business in Warren, New Jersey. It may be served with process through its registered agent, CT Corporation Systems, 350 N. St. Paul Street, Dallas, Texas 75201.

4. Virgin Mobile Pty Ltd. is an Australian company with its principal office in Sydney, New South Wales, Australia. As this lawsuit arises from Defendant's business in Texas, and it neither designated nor maintains a registered agent for service of process in Texas, it is deemed to have appointed the Secretary of State as its agent. The Secretary of State, after receiving service of process through mail or otherwise, may forward a copy of the citation and petition to Defendant's Secretary, Paul Gerard O'Brien at Defendant's home office, Level 29 Optus Centre, 101-103 Miller Street, North Sydney, NSW 2060.

5. Creative Commons Corporation is a Massachusetts Nonprofit Corporation with its principle office in Cambridge, Massachusetts. As this lawsuit arises from Defendant's business in Texas, and it neither designated nor maintains a registered agent for service of process in Texas, it is deemed to have appointed the Secretary of State as its agent. The Secretary of State, after receiving service of process through mail or otherwise, may forward a copy of the citation and petition to Defendant's registered agent, Lawrence Lessig, at 171 Second Street, Suite 300, San Francisco, CA 94105.

Jurisdiction

6. Personal jurisdiction is proper because the photograph serving as the basis of this suit depicts a Texas resident and was created in and licensed to Defendants in Texas.

7. Subject matter jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

Venue

8. Dallas County is the proper venue because Virgin Mobile agreed to perform the contractual obligations that make the basis of this suit in Dallas County and because it is where a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred. TEX. CIV. PRAC. & REM. CODE § 15.035.

Facts

9. This cases arises from Virgin Mobile's unauthorized and exploitative use of Alison's Chang's image in an advertising campaign launched in June 2007 to promote free text messaging and other mobile services.

10. The campaign, titled "Are You With Us or What," features a collection of over one-hundred images downloaded from Yahoo's photo-sharing website, Flickr. The photos are displayed on billboards, newspaper ads, and Virgin's website, accompanied by trenchant, and often disparaging, slogans that expand upon the underlying image—*e.g.*, the caption "Monks are Boring" is superimposed over a group of monks, and "People who talk in lifts have bad breath" appears above an image of six adults in an elevator.

11. What distinguishes this campaign from most if not all others, however, is the fact that the images are being used under the Creative Commons "Attribution" licenses without the knowledge or consent of the persons depicted in the photos. The license was designed to provide a less restrictive alternative to the full copyright protections that immediately attach to an "original work of authorship"—*e.g.*, a photograph—by enabling the creator to authorize uses that would otherwise violate a standard copyright.

12. It does not, however, eviscerate or supplant a person's independent right of privacy. The license dictates the manner in which third parties may use the protected work, while privacy rights protect the images and likenesses of the people depicted in the work (*i.e.*, the subject of a photograph).

13. Alison Chang is a sixteen year old high school student who, like many other Flickr users, recently discovered that Virgin Mobile has been using an image of her obtained from a photograph posted on Flickr to promote free text messaging on a billboard in Australia. Superimposed over an image of Alison holding a peace sign is the slogan "Dump Your Pen Friend." A photograph of the billboard is attached hereto as Exhibit "A." The photograph was taken on April 21, 2007 by Alison's youth counselor, Justin Wong, who, using a creative commons attribution license, published the photo on his Flickr page that same day. Several weeks later, Alison received an email from one of her friends with an image of the billboard attached.

14. The photograph immediately incited the interest of news stations, legal commentators, and website bloggers across the world—primarily because Alison is the only minor depicted in the campaign. And in a matter of months, Alison was transformed from a

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normal high school student to the "dump your pen friend girl" whose name generates over a hundred responsive links on Google. Although Alison, like most teenage girls her age, tried at all costs to avoid humiliating and embarrassing situations, because of Virgin Mobile's opportunistic conduct, she now faces them every day.

15. Virgin Mobile continues, nonetheless, to defend its unauthorized use of the images by offering mere subterfuge and pretext: "[f]eaturing Flickr imagery in our communications is part of our ongoing commitment to champion the spontaneous and genuine nature of the photographs of Flickr. We see Flickr as a vibrant, contemporary, online community and resource and that the spirit of the creative commons agreement matches Virgin's philosophy, as well as the inclusive nature of our "Are you with us or what?" campaign."

COUNT I
INVASION OF PRIVACY

16. All preceding paragraphs are incorporated as if set forth fully herein.

17. Virgin Mobile willfully misappropriated Alison's name and likeness without her consent by using a photograph of her holding a peace sign in connection with its "Are you with us or what" campaign. In using this photograph, Virgin Mobile implicitly represented to the public that Alison consented to the use of her likeness to endorse Virgin Mobile's products, when, in fact, she had no knowledge that her image was being used.

18. Virgin Mobile intentionally misappropriated Alison's likeness and image for its own use and benefit. More specifically, Alison's image enhanced the advertising campaign because she possesses certain immutable characteristics—such as her age and appearance—that appeal to and attract Virgin Mobile's target demographic.

19. As a direct and proximate result of Virgin Mobile's opportunistic and unauthorized misappropriation of Alison's photograph, she has permanently lost the exclusive right of control over her image and likeness. Virgin Mobile's actions have also caused her to experience and suffer humiliation, severe embarrassment, frustration, grief, and general mental anguish damages, all of which, in reasonable probability, will subsist in the future. Furthermore, Alison has sustained damage and injury to her reputation and good name in the community, which exposes her to contempt and ridicule among her peers, neighbors, relatives and friends, and impairs, among other things, her ability to gain acceptance to universities of her choice.

20. Moreover, Virgin Mobile has been unjustly enriched by Alison, as her image and likeness promoted and enhanced Virgin Mobile's business activities, including its "Are you with us or what" campaign, by appealing to its target demographic, entitling her to recover the amount by which Virgin Mobile has been unjustly enriched.

21. As Virgin Mobile intentionally and maliciously violated Alison's right of privacy through misappropriating her image and likeness without the necessary consent, she seeks exemplary damages in a sum within the jurisdictional limits of this Court.

COUNT II
LIBEL PER SE

22. All preceding paragraphs are incorporated as if set forth fully herein.

23. The publication of Alison's image along with the caption "Dump your pen friend" is libelous, injuring Alison's reputation and, thereby, subjecting her to public contempt, embarrassment, humiliation, and disgrace.

24. Virgin Mobile's defamation of Alison through this graphic and insulting form was so obviously hurtful on its face that it constitutes libel per se and could reasonably be calculated

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10/18/07 12:42 2146318069

to cause injury to her reputation and good name, for which she seeks actual damages within the jurisdictional limits of this Court.

25. In publishing her photograph under the caption "Dump your pen friend," Virgin Mobile acted with malice, intending to subject Alison to public humiliation, disgrace and embarrassment. As a result of Virgin Mobile's false and libelous statements, Alison is also entitled to exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code §41.001(7) and §41.003(a)(2).

COUNT III
LIBEL PER QUAD

26. All preceding paragraphs are incorporated as if set forth fully herein.

27. Virgin Mobile further defamed Alison by encouraging, through innuendo, those who viewed the campaign to end their friendship with anyone that bears a resemblance to Alison. The statement "Dump your pen friend," is particularly harmful given that Alison is a sixteen year old high school student, who is highly influenced by and susceptible to peer ridicule and opinion.

28. Virgin Mobile acted with malice in publishing Alison's photograph and, as a result, caused her to experience public humiliation, embarrassment and damage to her reputation and good name in the community.

COUNT IV
BREACH OF CONTRACT

29. All preceding paragraphs are incorporated as if set forth fully herein.

30. Justin Wong entered into a valid and enforceable license contract with Virgin Mobile when the latter downloaded the photograph of Alison Chang from Flickr. The contractual license agreement is entitled "Creative Commons Attribution 2.0." A copy of the license is attached hereto as Exhibit "B." Because Justin Wong entered into a valid and

enforceable contract with Virgin Mobile, he has standing to bring this breach of contract action against Virgin Mobile.

31. Under the express terms of the license contract, Virgin Mobile was obligated, *inter alia*, to attribute Justin Wong as the photographer of the picture. Virgin Mobile failed to comply with this obligation, thereby breaching the terms of the contract.

32. Section 7(a) of the contract specifically states that "[t]his License and the rights granted hereunder will terminate automatically upon any breach by You of the terms of this License." It therefore follows that when Virgin Mobile breached the contract by posting the photograph of Alison Chang without properly attributing the photographer and licensor, Justin Wong, the contract terminated, which thereby abrogated any rights that were otherwise granted to Virgin Mobile under the terms of the license.

33. As a result of Virgin Mobile's breach of the license agreement, Justin Wong has suffered injury and damages, entitling him to an award of compensatory, consequential and other damages, along with his attorney's fees and costs.

COUNT V
NEGLIGENCE

34. All preceding paragraphs are incorporated as if set forth fully herein.

35. Creative Commons owed a duty to Justin Wong, as a user and beneficiary of its license. Creative Commons breached this duty by failing, among other things, to adequately educate and warn him, as a user of the Creative Commons Attribution license, of the meaning of commercial use and the ramifications and effects of entering into a license allowing such use. As a result, Justin Wong has suffered damages proximately caused by Creative Commons's acts and omissions.

Conditions Precedent

36. Any conditions precedent to Plaintiff's right to recover have been performed or occurred

Jury Demand

37. Plaintiffs request a trial by jury.

Prayer

38. WHEREFORE, Plaintiff respectfully requests the following relief:

1. That Defendant be cited to appear and answer herein;

2. That upon final trial hereof, Plaintiffs recover judgment against Defendant for all damages incurred as a result of Defendant's wrongful conduct, as alleged herein;

3. That upon a final trial hereof, costs be taxed against Defendant;

4. That upon a final trial hereof, Plaintiffs recover all pre and post judgment interest allowed by law;

5. That upon a final trial hereof, Plaintiff recover such other and further relief, general or special, legal or equitable, to which it may justly be entitled.

Respectfully submitted,

Ryan H. Zehl
Texas State Bar No. 24047166
Bryant A. Fitts
Texas State Bar No. 24040904
FITTS ZEHL LLP
5065 Westheimer Rd., Suite 700
Houston, Texas 77056
Telephone 713.491.6064
Facsimile 713-583-1492

Attorneys for Plaintiff Susan Chang, next friend of Alison Chang, a Minor, and Justin Ho-Wee Wong

EXHIBIT "A"

FROM GX
10/18/07 12:44 2146318069
(THU)OCT 18 2007 12:31/ST.12:24/NO.6304325005 P 15

Exhibit A

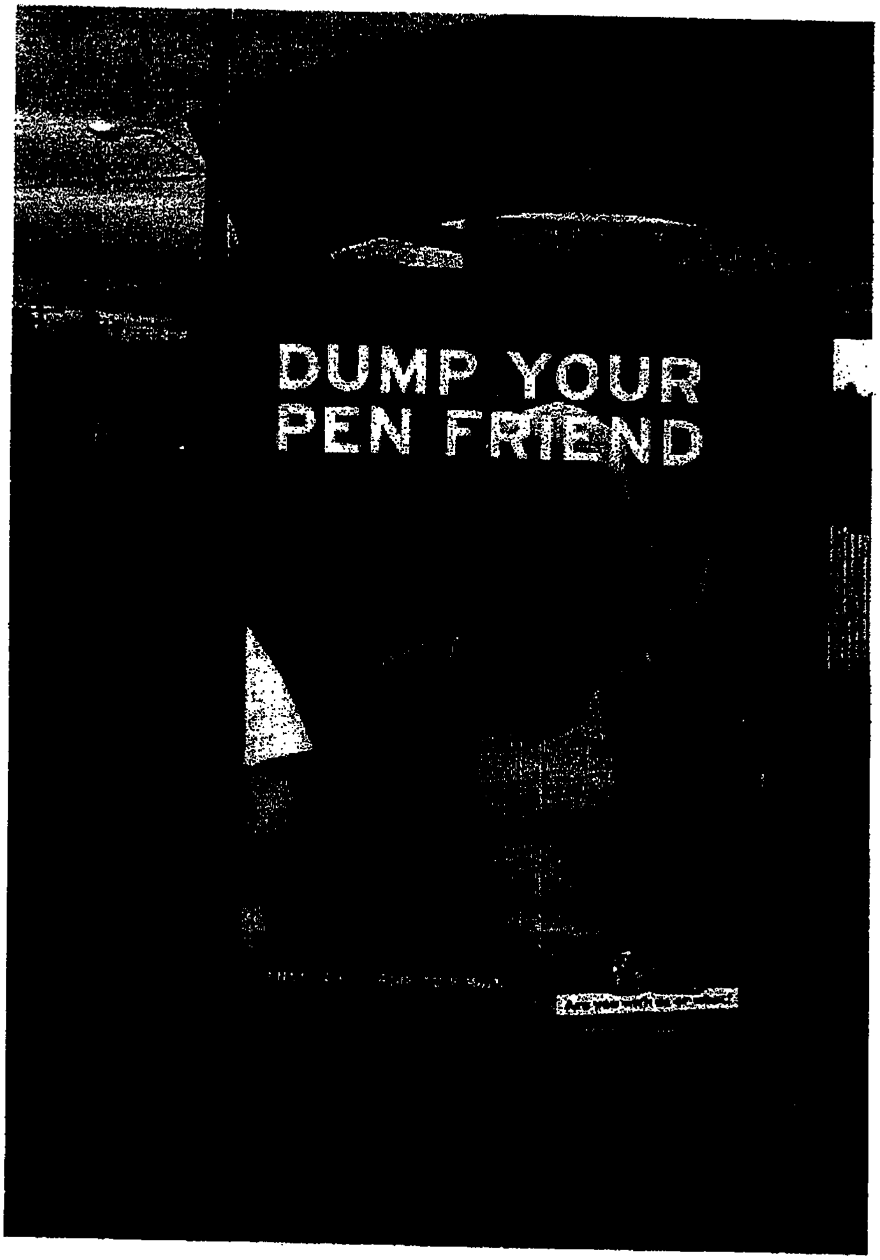
DUMP YOUR
PEN FRIEND

EXHIBIT "B"

FROM GX
10/18/07 12:44 2146318069
(THU)OCT 18 2007 12:31/ST.12:24/NO.6304325005 P 17

creative commons
LEGAL CODE

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(THU)OCT 18 2007 12:32/ST. 12:24/NO. 6304325005 P 19

2146318069

FROM GX

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Fitts Zehl, LLP

The Galleria Financial Center
5065 Westheimer, Suite 700
Houston, Texas 77056
Voice (713) 491-6064
Facsimile (713) 583-1492
www.fittszehl.com

September 19, 2007

VIA ELECTRONIC FILING
Gary Fitzsimmons
Dallas County District Clerk
600 Commerce St., Suite 103
Dallas, TX 75202

Re: *Susan Chang, next friend of Alison Chang, a minor, et al. v. Virgin Mobile USA, LLC, et al.*

Dear Mr. Fitzsimmons:

Enclosed please find Plaintiffs' Original Petition. I have submitted electronic payment in the amount of $347.00 ($217.00 for the Petition, $24 for two citations directed to the Secretary of State, $8 for standard citation, $30.00 for the jury fee, and $68.00 for 4 copies of the Petition).

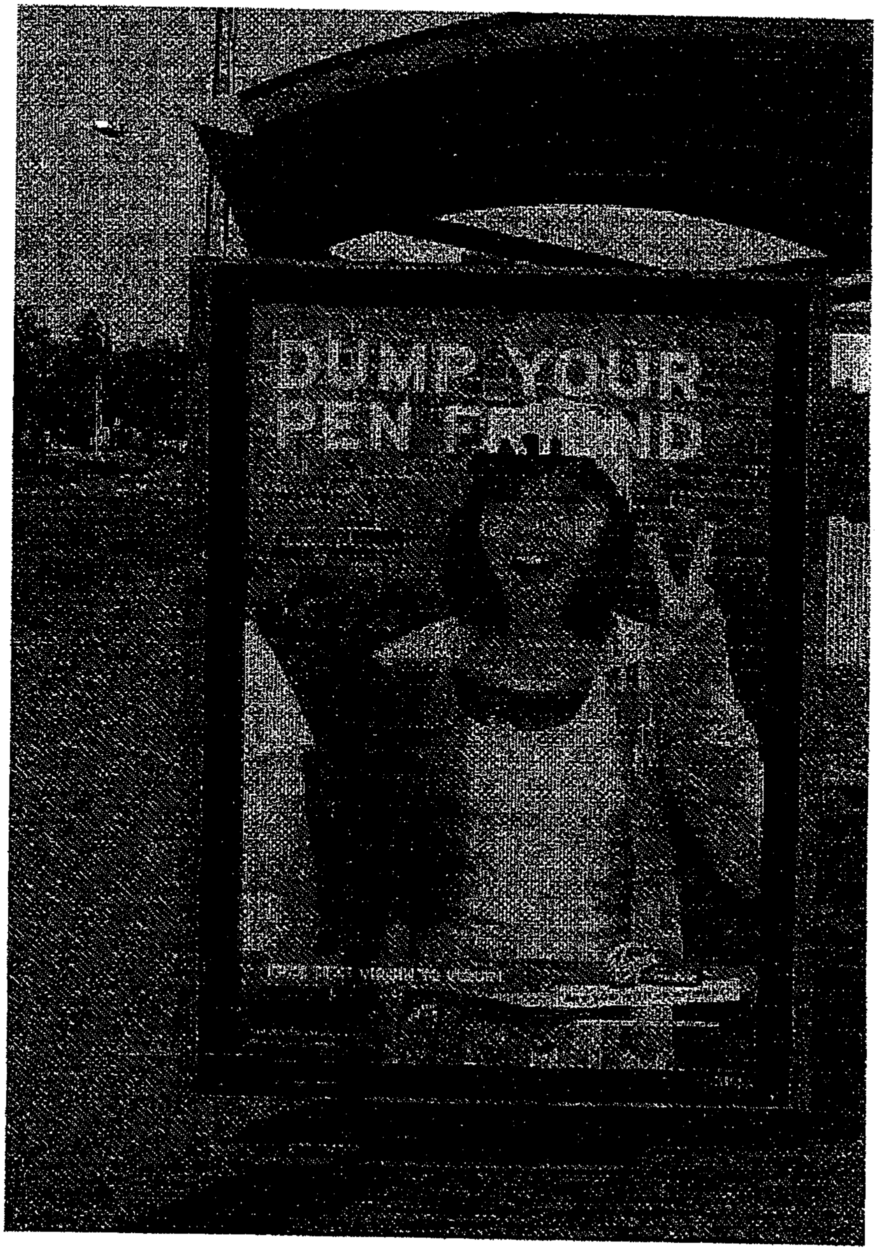
Please file and time stamp the Petition, and return a copy to our firm along with a citation for each of the three defendants. As you will notice in the Petition, we are serving Virgin Mobile Pty Ltd. and Creative Commons Corporation through the Texas Secretary of State.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

Ryan H. Zehl

Exhibit A


DUMP YOUR
PEN

TAB 2

FILED
GARY FITZSIMMONS, DIST. CLERK
SEP 19 2007
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

GARY FITZSIMMONS
DALLAS COUNTY DISTRICT CLERK

CAUSE NO.: 07-11386

Susan Chang PLAINTIFF	*	IN THE DISTRICT COURT
	*	
VS	*	G-134th JUDICIAL DISTRICT
Virgin Mobile USA, LLC DEFENDANT	*	
	*	DALLAS COUNTY, TEXAS

ENTER DEMAND FOR JURY

JURY FEE PAID BY:

PLAINTIFF / **DEFENDANT**

FEE PAID: $30.00

RECORDED IN VOLUME 124 **PAGE** 0602

600 COMMERCE STREET * DALLAS, TEXAS 75202 * (214) 653-7149
FAX (214) 653-6634 * E-mail: gfitzsimmons@dallascounty.org
Web Site: www.dallascounty.org/

TAB 3

FORM NO. 353-3 - CITATION

THE STATE OF TEXAS

See Attached Return of Service

To:
VIRGIN MOBILE USA, LLC
SERVING CT CORPORATION SYSTEMS
350 N ST PAUL STREET
DALLAS TX 75201

GREETINGS:
You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **ORIGINAL** petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **134th District Court** at 600 Commerce Street, Dallas, Texas 75202.
Said Plaintiff being **SUSAN CHANG**

Filed in said Court **on this the 19th day of September, 2007** against

VIRGIN MOBILE USA, LLC, ETAL

For suit, said suit being numbered **DC-07-11386**, the nature of which demand is as follows:
Suit On DEBT/CONTRACT etc. as shown on said petition , a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.
WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.
Given under my name and the Seal of said Court at office on this **26th day of September, 2007**

ATTEST: GARY FITZSIMMONS
Clerk of the District Courts of Dallas, County, Texas

By ______________________, Deputy
RITA RODGERS

DISTRICT COURT DALLAS COUNTY TEXAS

ATTY

CITATION

No.: **DC-07-11386**

SUSAN CHANG
vs.
VIRGIN MOBILE USA,LLC, ETAL

ISSUED
on this the 26th day of September, 2007

GARY FITZSIMMONS
Clerk District Courts,
Dallas County, Texas

By **RITA RODGERS,** Deputy

Attorney for Plaintiff
RYAN H. ZEHL
3000 THANKSGIVING SQ
1601 ELM ST
DALLAS TX 75201-4761
713-491-6064

TAB 4

134th District Court of DALLAS County, Texas
600 COMMERCE STREET, 4TH FLOOR DALLAS TX 75202

Case #: DC0711386

FILED
2007 OCT 16 AM 8:56
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO. TEXAS

SUSAN CHANG, AS NEXT FRIEND OF ALISON CHANG, A MINOR, AND JUSTIN HO-WEE WONG

Plaintiff

vs

VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION

Defendant

AFFIDAVIT OF SERVICE

(Private Process)

I, Roy Brice, being duly sworn deposes and says;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 10/10/07 11:00 am, instructing for same to be delivered upon Virgin Mobile Usa, Llc By Delivering To It's Registered Agent CT Corporation System By Delivering To It's Designated Agent, Sandy Galicia.

That I delivered to	: **Virgin Mobile Usa, Llc By Delivering To It's Registered Agent CT Corporation System By Delivering To It's Designated Agent, Sandy Galicia**
the following	: **CITATION; PLAINTIFF'S ORIGINAL PETITION; EXHIBITS A & B**
at this address	: **350 N. St. Paul St., Ste 2900** **Dallas TX 75201**
Manner of Delivery	: **by PERSONALLY delivering the document(s) to the person above.**
Date and time	: **October 11, 2007 3:15 pm**

I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief.
EXECUTED BY:

10-11-07
Date

Roy Brice
Texas LIC#: SCH-2622

On this day Roy Brice appeared before me, a notary public, and being duly sworn by me stated that he/she has personal knowledge of the facts set forth in the foregoing affidavit and declared that the facts contained therein are true and correct. Given my hand and seal of office this 11 day of Oct 2007.

Nakia V. Stanton
NOTARY PUBLIC FOR THE STATE OF TEXAS

NAKIA V. STANTON
Notary Public
STATE OF TEXAS
My Comm. Exp. 07-19-2008

PCP Inv. #D71000312
Private Process Server
Professional Civil Process Dallas, Inc.
6116 North Central Expy. #305 Dallas TX 75206
(214) 748-8866

AX02D71000312

+ Service Fee:	55.00
Witness Fee:	.00
Mileage Fee:	.00

syblem

Zehl, Ryan H.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, as Next Friend of A.C., a Minor, AND JUSTIN HO-WEE WONG Plaintiffs, v. VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION Defendants.	§ § § § § § § § § § § § §	CAUSE NO. 3:07-CV-1767-D

DEFENDANT VIRGIN MOBILE USA, L.P.
CERTIFICATE OF INTERESTED PERSONS

Virgin Mobile USA, L.P. ("Virgin Mobile USA") identifies the following parties as persons, associations of persons, firms, partnerships, corporations, affiliates, partners corporations or other entities that are believed at this time to be financially interested in the outcome of this litigation:

1. Plaintiffs, Susan Chang, as parent a/n/f/ of A.C., and Justin Ho-Wee Wong.
2. Ryan H. Zehl and Bryant A. Fitts, counsel for Plaintiffs.
3. Defendant, Virgin Mobile USA.
4. VMU GP1, LLC, the general partner of Virgin Mobile USA.
5. Virgin Mobile USA, Inc., a limited partner of Virgin Mobile USA.
6. Sprint Nextel Corporation, a limited partner of Virgin Mobile USA.
7. Skadden, Arps, Slate, Meagher & Flom LLP, counsel for Virgin Mobile USA.
8. Defendant, Virgin Mobile Pty, Ltd. (Virgin Australia).

9. Baker & McKenzie, LLP, counsel for Virgin Australia.

10. Defendant, Creative Commons Corporation ("Creative Commons").

11. Thompson, Coe, Cousins & Irons, counsel for Creative Commons.

Dated: November 13, 2007.

Respectfully submitted,

/s/ *Noelle M. Reed*
Noelle M. Reed
nreed@skadden.com
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MEAGHER & FLOM LLP
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Houston, TX 77002
(713) 655-5160 (Telephone)
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MEAGHER & FLOM LLP
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Midlothian, Texas 76065
(972) 723-6370 (Telephone)
(888) 329-3350 (Facsimile)
*A resident of the Dallas Division of the Northern District of Texas and a member of the Bar of this Court.

OF COUNSEL:

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Court ID No. 3571
(*Pro hac vice* motion forthcoming)
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MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000 (Telephone)
(212) 735-2000 (Facsimile)

ATTORNEYS FOR DEFENDANT
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